

An Audit of Milwaukee County Parks Facilities Leases

April 2006

Committee on Finance and Audit

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April 25, 2006

To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

We have completed an audit of Parks Facilities Leases. The report is in response to an April 2005 County Board Resolution [File No. 05-214] authorizing and directing an audit of Parks facility leases with private businesses that lease space from Milwaukee County to perform revenue generating business activity. The report identifies concerns with management oversight of Parks leases and contains recommendations to address those concerns.

A response from the Director of Parks is included as **Exhibit 2**. We wish to acknowledge the cooperation extended by the staff at the Department of Parks, Recreation and Culture, as well as staff of lessees contacted throughout the audit process.

Please refer this report to the Committee on Finance and Audit.

Jerome J. Heer
Director of Audits

JJH/cah

Attachment

cc: Milwaukee County Board of Supervisors
Scott Walker Milwaukee County Executive
Sue Black, Superintendent, Department of Parks, Recreation and Culture
Linda Seemeyer, Director, Department of Administrative Services
Steven Agostini, Fiscal and Budget Administrator, DAS
Terrence Cooley, Chief of Staff, County Board Staff
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An Audit of Milwaukee County Parks Facilities Leases

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Summary

Milwaukee County has a rich tradition of developing, maintaining and operating an extensive system of parks and recreational facilities for the benefit of its citizens. The Department of Parks, Recreation and Culture (Parks) administers and operates a park system comprised of approximately 15,000 acres of public parkland. Over the years, Parks has administered numerous agreements with third parties for both the commercial and non-commercial use of various Parks locations and facilities. In April 2005, the Milwaukee County Board of Supervisors adopted a resolution [File No. 05-214] authorizing and directing the Department of Audit to conduct an audit of Parks facility leases with private businesses that lease space from Milwaukee County to perform revenue generating business activity.

We selected, for detailed review, three highly visible locations at which Parks has revenue-generating leases with commercial enterprises:

- **O'Donnell Park Site.** At this lakefront location, Parks has lease and management agreements with Grandview Management, Inc. to operate the *Coast Restaurant* as well as to book and cater events at the *Miller Room* in the Miller Pavilion at O'Donnell Park and at the *Harbor Lights Room* at the adjacent Downtown Transit Center.
- **Lake Park Site.** At this location atop the bluffs overlooking Lake Michigan, Parks has a lease and management agreement with Mary-Bart, LLC to operate *Bartolotta's Lake Park Bistro* restaurant.
- **Red Arrow Park Site.** At this downtown location near City Hall, Parks has a lease and management agreement with Starbucks Corporation to operate a coffee shop.

Specific Findings

For each location, copies of relevant leases were obtained and key provisions were identified for compliance testing. Following are examples of specific findings detailed in the first three sections of the report.

- **Letter of Agreement altering lease terms.** Grandview and Parks entered into a Letter of Agreement in October 2003. The letter includes several provisions altering terms of its leases for exclusive rights to provide catering services at the *Miller Room* and *Harbor Lights Room* at the O'Donnell Park site. The agreement allows Grandview an offset to rental payments in excess of established minimums of up to \$40,000 annually to recruit, train and employ a salesperson to promote the venues. According to Grandview management, the Letter of Agreement stemmed from County budgetary cutbacks that eliminated a seasonal Parks employee assigned to promote and book the O'Donnell Park venues. While implementation of the agreement appears to have been beneficial to the County, the Letter of Agreement, which

altered terms of two County Board-approved leases, was never submitted to the County Board for its consideration.

- **Lack of formal agreement on substantive issue.** We identified numerous catered events held outdoors on the North and South Lawns (Garden Space) at the O'Donnell Park site for which no sales commissions were paid to the County. While the County obtains commissions of 8% and 21% of gross sales for catered events in the *Miller Room* and *Harbor Lights Room*, respectively, none of the three leases between Grandview and Milwaukee County addresses catering services for outdoor events.
- **Administration of the Lake Park Pavilion Trust Fund.** The County Board resolution authorizing the Parks Department to enter into an agreement with Mary-Bart for the operation of a restaurant at Lake Park Pavilion specifically authorized placement of certain rental payments into an interest bearing account to be used for improvements and maintenance of the Lake Park Pavilion and its immediate area. Mary-Bart has acted in good faith in its treatment of the Trust Fund, seeking and obtaining authorization from Parks for all Trust Fund expenditures. However, the manner in which the fund is administered, as well as the protocol for determining prospective uses of Trust Fund monies, needs clarification.
- **Timeliness and accuracy of invoices.** In some instances, Parks staff sent out invoices for rent and utility charges due several months after the due dates. In another instance, an annual payment of \$1,000 has not been invoiced for two consecutive years. However, we did note a distinct improvement in Parks record keeping beginning in 2004.
- **Miscoding of revenues.** During the review process, we identified several instances in which Parks staff miscoded revenue from leases in the County's financial system.
- **Verification of rental payment calculations.** Four of the five leases reviewed in detail contain provisions for all or a portion of rental payments due to be calculated as a percentage of gross sales associated with use of the leased facilities. In each instance, Parks staff did not obtain supporting financial records or annual audited financial statements for purposes of verifying the accuracy of the lessee's calculations of rent obligations.
- **Enforcement of insurance certificate provisions.** The required insurance certificate for one lessee did not include Milwaukee County as an additional insured.

Management Oversight of Leases

In their totality, the specific findings identified in this report indicate lax management oversight of Parks lease agreements. This is reflected in the fragmented responsibility for, and limited staff time devoted to, the lease management function. The lack of accountability for hands-on management of lease agreements may, in part, be attributable to substantial organizational turmoil in the Parks Department in recent years. Specifically, key managers were terminated in 2003. Also, from 2004 through December 2005, Parks was a division of the Department of Parks and Public Infrastructure. During that period, contract management duties were shifted among a number of individuals.

The Parks Director has taken steps recently to bolster the resources devoted to contract management. The position of Deputy Director for Operations was recently filled, and on March 9,

2006 the County Board approved a newly created position of Contract Administrator for the Parks Department. It is anticipated that this individual will provide a focal point for accountability in addressing the concerns raised in this audit report.

Market Rates for Leased Properties

We performed a limited review of commercial rental rates in the downtown Milwaukee area for purposes of evaluating the rental rates established in the lease agreements for each of the three County sites reviewed. Based on this limited review, we concluded that the rental rate established for the Red Arrow Park Starbucks site appears to be above market rates for retail space in the downtown area. The data also shows that while base rental rates for leases associated with restaurants located at the O'Donnell Park and Lake Park sites appear below market rates, when parking fees (O'Donnell Park site) and reinvestment premium rates (Lake Park site) are included, rental rates for those locations are generally in line with market rates. Considering the difficulties experienced by the County in attracting and facilitating these commercial developments, as well as the significant improvements to the facilities contributed by the tenants at both locations, the rental rates established for each of these sites appear reasonable.

We wish to acknowledge the cooperation of Parks staff as well as staff of lessees contacted throughout the audit process. We have included recommendations to address the items of concern raised in the audit report. A management response from the Director of Parks is presented as **Exhibit 2**.

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Background

Milwaukee County has a rich tradition of developing, maintaining and operating an extensive system of parks and recreational facilities for the benefit of its citizens. The Department of Parks, Recreation and Culture (Parks) administers and operates a park system comprised of approximately 15,000 acres of public parkland that includes, among other things:

- 150 parks and parkways;
- 15 golf courses;
- Four community/recreation centers;
- Two family aquatic centers and 11 public pools;
- Five beaches;
- 178 picnic areas;
- 23 major pavilions;
- 188 athletic fields;
- the 106-mile Oak Leaf Trail;
- the Mitchell Park Horticultural Conservatory (the Domes);
- Boerner Botanical Gardens;
- McKinley Marina; and
- Wehr Nature Center.

Over the years, Parks has administered numerous agreements with third parties for both the commercial and non-commercial use of various Parks locations and facilities. A list maintained by Parks identified 138 separate agreements as of August 2005. In some instances, these agreements are formal arrangements with municipalities or non-profit groups for the use of specific parkland. Other agreements represent straightforward business relationships, such as an agreement to provide an easement on County parkland for the construction and operation of a television station satellite tower in exchange for annual lease payments. In other instances, Parks has developed public/private partnerships to develop and operate or manage more complex endeavors. One example is an agreement with Wisconsin Professional Golf Association Services to manage several County golf courses and pro shops.

Table 1 shows budgeted and actual revenues from Parks lease and rental agreements for the period 2002 through 2005.

Table 1
Parks Revenue from
Lease Agreements
2002—2005

<u>Revenue Type</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Building Space Rental	\$ 809,866	\$ 916,727	\$ 1,061,729	\$ 1,152,955
Utility Reimbursement	40,933	105,662	55,112	149,287
Parking Fees	<u>2,012,395</u>	<u>1,888,598</u>	<u>1,688,878</u>	<u>1,626,378</u>
Total	\$ 2,863,194	\$ 2,910,987	\$ 2,805,719	\$ 2,928,620

Source: Milwaukee County automated fiscal reports, 2002—2005.

Audit Approach

In April 2005, the Milwaukee County Board of Supervisors adopted a resolution [File No. 05-214] that states:

“WHEREAS, it is in the best interest of Milwaukee County to ensure that these leases are managed in a way that ensures accurate and timely payment of rent as well as to ensure compliance with all other contract provisions, and

WHEREAS, policy makers would also benefit from an assessment of the annual rent charges of Parks facilities as compared to other facilities in the private sector; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby authorize and direct the Department of Audit to conduct an audit of Parks facility leases with private businesses that lease space from Milwaukee County to perform revenue generating business activity and include in the review an assessment of compliance with contract terms for lease payments as well as compliance with other key contract provisions; and

BE IT FURTHER RESOLVED, that the audit also include an assessment of lease rental payments in comparison to other facilities in the community.”

The Audit Scope section provides a detailed description of the procedures used in the course of conducting this audit (see **Exhibit 1**). To address the concerns expressed in the authorizing resolution, we selected, for detailed review, three highly visible locations at which Parks has revenue-generating leases with commercial enterprises:

- **O'Donnell Park Site.** At this lakefront location, Parks has lease and management agreements with Grandview Management, Inc. to operate the *Coast Restaurant* as well as to book and cater events at the *Miller Room* in the Miller Pavilion at O'Donnell Park and at the *Harbor Lights Room* at the adjacent Downtown Transit Center.

- **Lake Park Site.** At this location atop the bluffs overlooking Lake Michigan, Parks has a lease and management agreement with Mary-Bart, LLC to operate *Bartolotta's Lake Park Bistro* restaurant.
- **Red Arrow Park Site.** At this downtown location near City Hall, Parks has a lease and management agreement with Starbucks Corporation to operate a coffee shop.

For each location, copies of relevant leases were obtained and key provisions were identified for compliance testing. Findings and conclusions reached from our audit work are presented in the remaining sections of this report, along with our recommendations for addressing items of concern. A management response from the Superintendent of Parks is presented as **Exhibit 2**.

Section 1: O'Donnell Park Site

O'Donnell Park is located in downtown Milwaukee overlooking the lakefront and Summerfest grounds. Across from this park is the Milwaukee Art Museum, which can be accessed by crossing a pedestrian bridge over Lincoln Memorial Drive.

Troubled History

The Miller Brewing Company Pavilion, sitting atop a 1,250-car parking garage at the O'Donnell Park location, was completed in 1992. For nearly three years, Milwaukee County actively sought, without success, a suitable tenant to establish and operate a restaurant at the O'Donnell Park site. On September 29, 1995, an entrepreneur entered into a ten-year lease agreement with the County to rent a portion of the Miller Brewing Company Pavilion for the purpose of operating a *Pavilion Restaurant*. The lease included an option for the lessee to extend the term for two consecutive five-year periods, effectively committing the County to a 20-year lease term. The rental payments were based on an annual base rent amount plus a share of certain facility and restaurant revenues based on annual gross sales.

File documentation indicates this public/private partnership did not proceed smoothly.

File documentation indicates this public/private partnership did not proceed smoothly. In November 1995, an application by the lessee to obtain a City of Milwaukee liquor license was withdrawn after a recommendation by the City of Milwaukee Police Department against the application, noting a criminal background of the restaurant's general manager. There were ongoing financial disputes between the County and the lessee and litigation appeared imminent. Due to lack of profitability, the *Pavilion Restaurant* closed in December 1999. Shortly thereafter, the lessee entered a management contract with two individuals to renovate the facility and in April 2000, service resumed in a restaurant known as *Nola's on the Lake*. However, the County continued to experience difficulties with the prime

leaseholder. On July 12, 2002, correspondence from the former Parks Director notified the lessee of a “failure to maintain and repair improvements, trade fixtures, equipment and mechanical systems” as required by the lease agreement. The letter outlined several specific violations, including failure to replace ceramic tile and grout in the kitchen area, professional cleaning of the grease traps, and cleaning and repair of the exhaust hoods and blower unit, which, according to the correspondence, were discussed on several occasions.

The same correspondence also mentioned the lessee’s intent to assign the lease to an established local restaurateur, but cautioned the lessee that the above-mentioned violations had to be corrected prior to the assignment.

In July 2002, the County Board adopted a resolution [File No. 02-347] that permitted the planned reassignment of the restaurant at O’Donnell Park. However, disputes between the lessee and the prospective assignee ensued, and by August 2002, the deal was cancelled.

Soon thereafter, Parks was notified that a separate vendor had begun negotiations with the lessee for possible assumption of the lease. This vendor already held a separate lease agreement with the County for the exclusive rights to provide catering services to parties that booked use of the *Harbor Lights Room* at the downtown Transit Center adjacent to the O’Donnell Park site. This existing vendor expressed interest in making over the restaurant’s image, menu, decor and facilities and, in the course of the make over, agreed to make the repairs specified in the July 12, 2002 correspondence from the former Parks Director.

The County Board approved the lease reassignment on September 26, 2002, and on October 16, 2002, an Assignment and Assumption of Commercial Lease was entered into by and between the former lessee and Grandview Management, Inc.,

d/b/a Ellen's Prestige Catering. The document transferred all of the rights, title and interest in the Lease Agreement to Grandview for the remainder of the term of the lease.

Key Lease Provisions

The lease agreement contains the following key contract provisions:

- **Lease Term.** The initial lease period is for ten years beginning November 1, 1995, with options to renew for two consecutive five-year periods.
- **Base Rent.** Base rent is \$5 per square foot (7,045 sq ft = \$35,225 per year) for the first ten years. The rate increases to \$7.50 per square foot for the 11th through 20th years.
- **Premium Rent.** Beginning with the 6th year of the lease, the annual rent is comprised of the base rent plus a premium 'profit sharing' rent of 1.5% of gross sales from restaurant activities in excess of \$2,499,999 from restaurant, rental and catering activities performed within the premises. For the 11th through 20th years of the lease, the premium rate increases to 3%. Premium payments are to be made before April 30 of each year, based on the calendar year revenue calculations prepared by the lessee's independent accounting firm.
- **Rental Adjustments.** Base rental rates are to be adjusted annually using the consumer price index for Milwaukee.
- **Parking.** The lease calls for the County to make available to lessee, at all times during the term of the lease, up to 25 unreserved and four reserved parking spaces for use by lessee's employees at a rental rate equal to the monthly rate in effect from time to time in the parking structure. Further, the County is to provide stickers, to be affixed to lessee clientele's short-term parking tickets, which will provide for one and one half hours of 'free' parking. At the close of each month, the County is to bill lessee for 60% of the value of that month's accumulated parking ticket stickers, which will be due within fifteen (15) days of receipt of said bill.
- **Insurance.** The lease requires the lessee to submit certificates of insurance annually for the duration of the agreement. The County shall be named as additional insured. The County shall approve the certificate of insurance on the commencement date of the lease and each such anniversary date for the duration of the agreement.

- **Utilities.** The lease calls for the County to pay all utility charges and to bill the lessee monthly based on actual use.

Compliance with Lease Provisions

We interviewed Parks and Grandview staff, and examined relevant file documentation and financial records, to assess compliance with each of the key lease provisions identified. The following items of concern were identified during this process.

Base Rent and Utility Invoicing

Our review of file documentation identified problems with the timeliness of Parks' invoicing.

Our review of file documentation identified problems with the timeliness of Parks' invoicing. Specifically, Parks staff billed Grandview Management after the quarterly due dates. In 2003, Parks sent the 3rd and 4th quarter invoices several months after the due dates. In 2004, the 1st, 2nd and 3rd quarter utility bills were not sent until October 20, 2004, and the 4th quarter utilities were sent February 7, 2005. In 2005, the 1st quarter rent invoice was combined with the 2nd quarter invoice and sent June 24, 2005. According to the lease, Parks is required to bill on a quarterly basis for base rent and on a monthly basis for utilities.

Our review of the invoices showed no significant errors in calculating base rent or utility expense amounts, including the application of annual cost of living escalators to base rental rates.

To facilitate timely recording of revenue and to reduce the likelihood of errors or disputes arising from inconsistent invoicing periods, we recommend Parks management:

1. *Monitor staff performance in producing timely invoices for Parks facilities leases.*
2. *Bill utilities on a monthly basis, as required by the lease. Alternatively, for administrative ease, Parks may wish to seek County Board approval of a lease modification to permit quarterly billing of utilities.*

Miscoding Revenue

During this review process, we identified several instances in which Parks staff miscoded revenue from the *Coast Restaurant* lease in the County's financial system. While the total amounts of these particular miscodings totaled just \$20,208 and therefore were not material to the County's financial statements, we note that similar instances of miscoding internal cross-charges between two Parks Division units had a significant financial impact at year-end 2005 (this is described in detail in a memo from County Board Staff and the Director of Audits to the Finance and Audit Committee dated February 28, 2006).

To maintain the integrity of the County's financial statements, we recommend Parks management:

3. *Establish controls to spot-check the accuracy of staff revenue posting.*

Premium Rent Payments

Table 2 shows the gross sales and associated premium rental payments from Grandview for the three-year period 2003 through 2005.

Table 2 Gross Sales and Premium Rental Payments Coast Restaurant 2003—2005			
	<u>2003</u>	<u>2004</u>	<u>2005</u>
Gross Sales	\$996,947	\$3,105,174	\$2,430,743
Sales > \$2,499,999	-0-	605,175	-0-
Premium Rent Due @ 1½ %	-0-	\$9,078	-0-
Source: Independent CPA for Grandview Management, Inc.			

As reflected in **Table 2**, revenue from Grandview Management for the lease to operate the *Coast Restaurant* has included a premium rental payment in just one of the past three years.

Parks has relied upon Grandview to calculate and submit premium rental payments, without verification.

However, the information contained in **Table 2** was not obtained from Parks records. Rather, the data was obtained from Grandview's independent certified public accountant in response to a request from the Department of Audit. Parks has failed to enforce the lease provision requiring Grandview Management to submit calendar year revenue calculations prepared by its independent accounting firm. Although Parks has invoiced Grandview quarterly for base rent and utilities, it has relied upon Grandview to calculate and submit premium rental payments, without verification. For purposes of this audit, we accepted the gross sales figures compiled by Grandview's independent certified public accountant to verify the accuracy of premium rental payments made by Grandview for the period 2003 through 2005. However, Parks has not exercised the County's right to audit Grandview's books and records.

Section 24 (j) of the lease states:

"Lessee shall allow Lessor or their designated agent to review Lessee's audited financial statements, prepared by the Lessee's accountant under standard and accepted accounting principals, on an annual basis, in order for the Lessor to monitor Lessee's ongoing financial status."

To ensure the proper calculation and payment of appropriate premium rental payments under terms of the lease, we recommend Parks management:

4. *Obtain and review future calculations and supporting financial statements prepared by Grandview's independent accountant in calculating annual premium rental payments due Milwaukee County under its lease to operate the Coast Restaurant, including for years in which Grandview asserts that no premium rental payments are due.*

Parking

Prior to our review of the lease provisions pertaining to parking, the Parks Director informed us that this area was a subject of dispute between Grandview Management and Milwaukee County, and that because the dispute had the possibility of

involving litigation, the Corporation Counsel was involved. Consequently, we are summarizing our findings concerning compliance with parking provisions of the lease only in general terms. Based on our review, we noted:

- The formula used by Parks staff to calculate parking charges was flawed, resulting in inaccurate calculations of fees owed by Grandview Management.
- Since the opening of the restaurant in 2003, no fees were collected from *Coast Restaurant* patrons. Under provisions of the lease, parking fees in excess of the first 1½ hours should have been collected directly from the patrons.

At its meeting on March 9, 2006, the Milwaukee County Board of Supervisors approved a resolution [File No. 06-145] amending the lease provisions related to parking for *Coast Restaurant* patrons as recommended by Corporation Counsel as part of a settlement agreement with Grandview Management. The settlement agreement called for Grandview to pay Milwaukee County \$47,000. In addition, Grandview will no longer be responsible for any payments related to parking for its patrons. Rather, the individuals will be charged \$2.50 per car, with no specific time limitation, while patronizing the *Coast Restaurant*. This per-car parking fee may increase no more than 25 cents per car annually. With this agreement, both parties were able to avoid future litigation and to proceed with a mutual understanding of the manner in which parking fees would be collected from *Coast Restaurant* patrons.

Additional Leases at O'Donnell Park Site

As previously noted, Grandview Management, d/b/a Ellen's Prestige Catering, holds a separate lease for exclusive rights to provide catering services for events at the *Harbor Lights Room* at the downtown Transit Center building. That lease was originally established in 1997. In October 2002, Grandview accepted assignment of the previously described lease for *Coast Restaurant*. In December 2002, Grandview entered into a third lease, to provide exclusive catering services for events at the

Miller Room at the Miller Pavilion. Following is a discussion of issues identified during our review of key provisions of the two leases involving catering services.

Harbor Lights Room Lease

The key provisions of this lease include:

- **Rent.** Rent is established at 21% of gross food and beverage sales per month, less tax and tip. Payments are due on the 15th of each month. A minimum payment of \$60,000 annually is guaranteed by January 15 of the following year, should monthly payments based on gross sales total less than the minimum.
- **Sales Documentation.** Sales records relative to all food service operations covered by the agreement must be maintained. Monthly financial statements and reports, using acceptable bookkeeping and accounting procedures, must be prepared and furnished to the County within 15 days following the end of each month.
- **Audited Financial Statements.** A copy of the lessee's year-end financial statements, as prepared and audited by a licensed CPA, must be submitted to the Parks Director within 30 days of their completion.

Compliance with Lease Provisions

Following are issues of concern raised during our review of the *Harbor Lights Room* lease.

Rent and Sales Documentation

Parks has not properly enforced the lease provisions concerning the calculation and documentation of monthly rent amounts due.

Our review of payment documentation indicates Parks has not properly enforced the lease provisions concerning the calculation and documentation of monthly rent amounts due. Instead of documenting and remitting 21% of gross sales each month, the lessee has been permitted to pay a monthly, pro-rata share of the \$60,000 annual minimum guarantee. For example: In May 2002, the caterer's food and beverage sales grossed \$33,835, resulting in a rent due for that month of \$7,105 ($\$33,835 \times .21$). However, the actual payment remitted was \$5,000 ($\$60,000/12$). It should be noted that the minimum monthly payment of \$5,000 was also remitted for those months in which the caterer grossed

far less than the amount necessary to incur the \$5,000 obligation. For example, in March 2002, the caterer's gross sales were \$757, calling for a rental obligation of just \$159. According to the lease, monthly rental obligations are to be calculated based on gross sales, with a year-end reconciliation to determine whether or not an additional amount was due to ensure the annual minimum guarantee amount of \$60,000. Grandview management indicated the firm was under the impression that Parks preferred to receive the consistent cash flow from monthly minimum payments. Grandview management also pointed out that it would be difficult to issue reliable financial statements by the 15th of each month, since many patrons take much longer to pay for events such as wedding receptions.

We also noted that the caterer was not submitting monthly financial statements in support of the gross sales figures, as required by the lease.

To address concerns expressed by Grandview management and to achieve compliance with terms of the lease, we recommend that Parks management:

5. *Clarify with the lessee the most practical method of rental calculation and remittance within the general parameters of the lease and amend specific lease provisions as appropriate.*
6. *Enforce the lease provision requiring the submission of financial statements in support of rental calculations, as clarified in recommendation no. 5.*

Audited Financial Statements

Although a provision of the *Harbor Lights Room* lease, Parks has not enforced the requirement of the lessee to submit annual audited financial statements in support of sales associated with the lease. In requesting copies of audited financial statements, Grandview expressed concerns about the information becoming a matter of public record, because the audited financial statements are prepared on a consolidated basis, which include

business interests of Grandview that are outside the parameters of the *Harbor Lights Room* lease. For purposes of this audit, we accepted separate schedules detailing sales associated with the lease that were prepared by the independent CPA firm hired by Grandview.

To comply with lease provisions and to provide for verification of rental payments, we recommend Parks management:

7. *Require the lessee to provide annual audited financial statements for sales associated with the Harbor Lights Room lease. This could be accomplished by accepting schedules of gross receipts associated with the Harbor Lights Room lease, along with a letter attesting to their accuracy, from the independent CPA firm that produces its annual audit of financial statements on a consolidated basis.*

Miller Room

Grandview, d/b/a Ellen's Prestige Catering, has a third lease with Milwaukee County for exclusive rights to provide catering services for events at the *Miller Room* at the Miller Pavilion. The terms of this lease are the same, in all material respects, as the *Harbor Lights Room* lease, except for the rental rate. The rent for the *Miller Room* lease is established at 8% of gross sales.

Based on the similarities in the leases, our findings concerning the Miller Room lease are substantially the same as for the Harbor Lights Room.

Based on the similarities in the leases, our findings concerning the *Miller Room* lease are substantially the same as for the *Harbor Lights Room*, and therefore we recommend Parks management:

8. *Apply recommendations no. 5 and no 6 to the Miller Room lease, as well as to the Harbor Lights Room lease.*

In addition, we noted that although the *Miller Room* lease calls for the minimum annual rental payment guarantee of \$24,000 to be adjusted each year to reflect increases in the Consumer Price Index, no such adjustments have been made.

To comply with the lease provision regarding annual rental adjustments, we recommend that Parks management:

9. *Update the minimum annual rental payment guarantee for the Miller Room by the indexing formula contained in the lease agreement.*

Other Issues

Additional issues identified during our review of the O'Donnell Park site leases are discussed in the following sub-sections of this report.

Marketing Position and Treatment of Refunds

Grandview and Parks entered into a Letter of Agreement in October 2003. The letter, which is printed on Grandview letterhead, includes the following provisions:

- Grandview shall recruit, train and employ a salesperson to promote the *Miller Room* and *Harbor Lights Room* (Venues).
- Grandview will provide a dedicated phone line, office equipment, furnishings and supplies for this purpose.
- Grandview shall develop and implement a marketing campaign for the venues.
- Milwaukee County shall have the right to review the marketing materials and provide its input.
- Grandview may rent a venue for use by Grandview customers Monday through Thursdays, at a rental rate of \$200 per day (half the normal rate) but such rate shall not apply to more than 20 days within a given calendar year.
- Milwaukee County will modify its rental fee to allow renters of the *Harbor Lights Room* to also use the Garden Space at no additional charge.
- The guaranteed commission schedule under the contracts between Grandview and the County for the venues shall not be altered by the agreement. The County shall continue to receive a minimum of \$84,000 per year, (\$60,000 for *Harbor Lights Room* and \$24,000 for *Miller Room*).
- Grandview shall have the right to deduct the cost of labor associated with fulfilling the sales function at O'Donnell Park in the amount of \$40,000 per year.

- County will not be required to reimburse Grandview if the costs incurred by Grandview in marketing and leasing the venues exceed the additional commissions payable to County.
- Grandview shall provide the County with a monthly summary of room rentals and reservations.

The Letter of Agreement stemmed from County budgetary cutbacks.

According to Grandview management, the Letter of Agreement stemmed from County budgetary cutbacks that eliminated a seasonal Parks employee assigned to promote and book the O'Donnell Park venues.

Implementation of the Letter of Agreement has resulted in increased bookings at O'Donnell Park, as shown in **Table 3**.

Table 3 Number of Events Booked at O'Donnell Park Venues				
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Miller Room	48	41	54	56
Harbor Lights Room	62	62	81	84
North Garden	N/A	1	4	2
South Garden	N/A	N/A	3	4
Total	110	104	142	146
Average Number of Events 2002/2003 (Parks Promoting)			=	107
Average Number of Events 2004/2005 (Grandview Promoting)			=	144
Increase			=	35%
Source: Reports submitted to Parks Department by Grandview Management.				

While the implementation of the Letter Agreement has benefited the County through reduced staffing costs and additional booking and parking revenues generated from the increased number of events at O'Donnell Park venues, our review of the Letter of Agreement identified the following concerns:

- Neither Parks nor Grandview could provide us with signed copies of the letter. Apparently renewed on an annual basis since October 2003, the copy we were provided by Grandview, dated September 28, 2004, was signed by a Milwaukee County Corporation Counsel attorney on

September 27, 2005. Signature lines for a Grandview representative and the Parks Director were blank.

- The Letter of Agreement has never been submitted to the County Board for its approval.
- For the two years preceding the original Letter of Agreement, we noted that Grandview had subtracted gross sales that, for each year, would have resulted in a small amount of additional rental payments to the County for the *Harbor Lights Room*. For instance, in 2002, refunds totaling \$7,085 were subtracted from gross sales reported by Grandview to Parks. We contacted two parties who received the refunds that year. Both parties told us the refund was requested because of dissatisfaction with the service provided. Similarly, a reduction of \$1,233 appears to have been made to gross receipts reported by Grandview for the *Miller Room* in 2003. There is no provision in either the *Harbor Lights Room* or *Miller Room* lease agreements that addresses the issue of refunds. We note that no refunds are listed by Grandview after the Letter of Agreement was reached in October 2003.
- We found the language in the Letter of Agreement regarding use of the *Harbor Lights Room* and *Miller Room* by Grandview for Grandview customers, as well as language regarding allowing renters of the *Harbor Lights Room* use of the Garden Space at no additional cost, confusing. We noted in our review of commission payments under the *Harbor Lights Room* and *Miller Room* leases that several bookings for use of the Garden Space, while providing rental fees to the County, did not include commission payments on catering services. Grandview management told us that none of the three leases between the firm and Milwaukee County address commissions on sales of food and beverages provided exclusively at the outdoor Garden Space. *[Note: we will discuss this issue in greater detail under the following sub-section, "Lease Extension."]* Although Grandview management acknowledged that its catering service, Ellen's Prestige Catering, does not have exclusive rights to serve outdoor events, we noted that some of the forms used to book such events stated the contrary.

To address concerns identified with a Letter of Agreement between Grandview and Parks, we recommend that Parks management:

10. *Clarify the manner in which refunds will be treated. Refunds issued based on dissatisfaction with lessee service should not be allowable deductions from gross sales used to calculate County commissions.*

11. *Submit the Letter of Agreement to the Milwaukee County Board of Supervisors for approval or rejection.*
12. *Ensure signed copies of an approved Letter of Agreement, on Milwaukee County letterhead, are retained in Parks files.*

The initial lease agreement to operate the Coast Restaurant technically expired November 1, 2005.

Lease Extension

The initial lease agreement between Milwaukee County and Grandview Management, Inc. d/b/a Ellen's Prestige Catering Services, to operate the *Coast Restaurant* technically expired November 1, 2005. In addition, the lease agreement to provide catering and booking services at the *Miller Room* indicated that the term would run concurrent with the Restaurant Operation Agreement, so it, too, is technically expired.

The restaurant lease states:

“Lessee shall have the option to extend the term of the Lease for two (2) consecutive five (5) year periods (each an “Extended Term”). Such option shall be exercised by written notice to Lessor given at least nine (9) months prior to the expiration of the Initial Term or the applicable Extended Term.”

Grandview Management provided us with an unsigned letter dated March 18, 2005 requesting an extension from the Parks Department. According to the Parks North Regional Operations Manager, no extension was granted pending the County's negotiation of a settlement agreement with Grandview concerning parking issues (see previous discussion). The County Board resolution authorizing the settlement agreement noted Grandview expressed interest in extending its lease for *Coast Restaurant* for an additional five years. Now that the parking issue has been resolved, it is important to formally extend the lease. However, the technical lapse of the initial lease presents an opportunity to address a significant issue that does not appear to be addressed in any of the three leases between Grandview and Milwaukee County.

None of the leases address catered events on the lawn areas at O'Donnell Park.

Issue Not Addressed by Lease Agreements

Based on discussions with staff at both Grandview and Parks, as well as our review of three leases between the two parties and the previously described Letter of Agreement, there appears to be one substantive issue that is not clearly addressed in writing. Currently, Grandview, d/b/a Ellen's Prestige Catering, providing catering services to events on the North and South Lawns. The lease agreements for the *Harbor Lights Room* and the *Miller Room* provide Ellen's Prestige Catering, exclusive rights to provide catering services for events at those venues, in exchange for agreed-upon percentages of gross sales paid to the County. However, these leases do not address catered events on the lawn areas at O'Donnell Park. According to Grandview, no commissions are due for those events because they are not covered by any lease agreement.

In March 2006, the County Board approved a proposal for Grandview, in cooperation with the Park People, to renovate the *Miller Room*. The renovation project has an initial cost estimate of \$200,000, with the first \$100,000 to be funded by the Park People. Grandview has agreed to fund the remaining cost of the project. The renovation is expected to increase revenues to the County from increased bookings at the *Miller Room*. The Director of Parks was authorized to approve the final plans and budget for the project. No County funds are committed to the renovation.

In discussing this issue, Grandview management told us of its plans to transition catering business from the *Miller Room* and, ultimately, *Harbor Lights Room*, from Ellen's Prestige Catering to *Coast Restaurant* staff, and to use the *Coast* catering for outdoor events as well, providing the County with 1.5% of the gross sales on those events (3% effective November 1, 2005). However, it is not clear that this transition is permissible without the County's written consent under current lease agreements. It may not be in the County's best interest to permit the transition without

renegotiating terms, since the County is entitled to 8% of gross sales on *Miller Room* catered events and 21% of gross sales on *Harbor Lights Room* catered events.

To address issues not included in current lease agreements, we recommend Parks management:

13. *Develop, for County Board consideration, formal agreements with Grandview to address the issues of booking reservations for O'Donnell Park site venues, as well as commissions on food and beverage sales from catered outdoor events at the North and South Lawn areas (Garden Space) at the site. A decision by the County to authorize Grandview's planned transition of catering services from Ellen's Prestige Catering to Coast Restaurant staff should be made within the context of this overall agreement.*

Treatment of Expenses for Repairs

On July 11, 2005, Parks reimbursed Grandview \$1,421 for replacing the front doors after a break-in at *Coast Restaurant* that occurred on February 15, 2004. Also, on October 13, 2005, Parks reimbursed Grandview Management \$394 for safety glass to replace a broken window. In both instances, the reimbursement was achieved via a credit against rent payments due the County, with no further action taken by Parks staff.

According to the County's Director of Risk Management, for property claims, Milwaukee County has a \$50,000 deductible with a \$100,000 aggregate limit. Once claims exceed the aggregate deductible of \$100,000 the deductible drops to \$500. Therefore, according to the County's Director of Risk Management, it is important that all claims be submitted, regardless of the amount, as they are applied to the aggregate deductible and, when the aggregate deductible is reached, the County is reimbursed by the insurance company.

To ensure proper treatment of property damage claims that may ultimately be reimbursable through Countywide insurance coverage, we recommend Parks management:

14. *Report all damage to Parks facilities to the Risk Management Division of the Department of Administrative Services.*

Insurance Certificates

Each of the three leases between Grandview and Parks for operations at the O'Donnell Park sites (*Coast Restaurant, Harbor Lights Room* and *Miller Room*) contains slightly different insurance certification requirements. Grandview has one insurance certificate on file with Parks to cover the requirements of each lease. However, two of the lease agreements (*Harbor Lights Room* and *Miller Room*) contain the following provision:

“All such proof of insurance required herein shall state that sixty (60) days written notice will be given to the Director, by service of such notice upon the Director, before any insurance is materially changed, canceled or limits are markedly reduced.”

The insurance certificate on file with Parks does not contain the above assurances.

To comply with lease provisions designed to protect the County from unauthorized reductions in lessee insurance coverages, we recommend Parks management:

15. *Require Grandview to supply an amended insurance certificate that complies with lease requirements regarding notification of changes in insurance coverage.*

Section 2: Lake Park Site

In 1994, the Department of Parks, Recreation and Culture sent out two Requests for Proposals (RFP) in an attempt to solicit food service tenants for the Lake Park Pavilion. The pavilion is located in Lake Park, atop a bluff overlooking Lake Michigan from across Lincoln Memorial Drive just north of Downtown Milwaukee. A condition report prepared at the time by the Department of Public Works indicated that the pavilion was in good overall structural condition, however, it was in need of significant repairs and improvements totaling about \$452,140.

The first RFP went out in February of 1994 with a stipulation that the successful proposer must undertake substantial leasehold improvements. No responses were submitted. In June 1994, another RFP was sent out with two significant changes:

- It was noted that the Department had requested \$100,000 in its 1995 capital improvement budget for needed exterior work on the pavilion and for the possible installation of air conditioning in the pavilion's upper level; and
- Parks also expressly stated its interest in securing a long-term lease, with an initial ten-year term with contingent extensions.

Two responses were received. The successful proposal, by Joseph Bartolotta of Ristorante Bartolotta, d/b/a Mary-Bart, LLC, called for a full-service, year round public restaurant, with a Euro-style bistro theme featuring a French and Italian menu. It noted that outside investors and conventional financing would support an estimated \$700,000 in leasehold improvements.

Key Lease Provisions

The lease agreement contains the following key contract provisions:

- **Lease Term.** The lease is for a period of ten years starting September 1, 1995, with two five-year extensions at the option of the lessee. *[Note: The initial term of this lease expired on September 1, 2005. On October 19, 2004, Bartolotta executed its first five-year extension option through August 31, 2010.]*
- **Base Rent.** Base rent of \$33,500 is established for the first ten years.
- **Facility Reinvestment Premium Payments.** Beginning with the fourth year of the lease, an annual Facility Reinvestment Premium payment of 3% of annual gross sales in excess of \$1,499,999 is to be made before April 30 of each year. The payment is to be based on the calendar year revenue calculations prepared by the lessee's independent accounting firm. Section 4(a) of the lease states, in part:

“Lessor will use its best efforts to ensure that the facility reinvestment premium is paid into an interest-bearing account and utilized as a Lake Park Pavilion improvement and maintenance fund (“Lake Park Pavilion Trust Fund”). The Lake Park Pavilion Trust Fund will be used to enhance exterior and interior Building and immediate area improvements, repairs and upgrades, as presented by the Lessor and reviewed by the Lessee. The immediate area includes the Building, the parking lot, and the park environs within 100 feet of the Building and parking lot.”

- **Rental Adjustments.** At five-year intervals during the initial lease and lease extension period, the base rent of \$33,500 annually is adjusted by 50% of the increase in the consumer price index during the previous period.
- **Parking.** Lessor agrees to make available to lessee at all times during the term of the lease up to 45 unreserved parking spaces for use by lessee's clientele and employees.
- **Insurance.** The lease calls for the County to be named as additional insured and be afforded a 30 day written notice of cancellation or non-renewal of insurance coverage. County approval of the certificate of insurance also is required for the duration of the lease agreement.
- **Utilities.** The lease states that the County will pay for gas, heat, air conditioning, electricity and any and all other utilities or other services excluding telephone, and bill the lessee on a quarterly basis based on a sub-metering of the actual cost of these expenses. Lessee will, at its sole expense, provide for the installation of a separate metering system for these expenses, with the exception of heating expenses, for which

the County will bill the lessee on a proportionate basis, as determined by lessee's share of the total heating space in the building.

- **Janitorial Services.** The lease requires the lessee, at its own expense, to provide or cause to be provided, routine cleaning of, and janitorial services to, the entire building (not limited to the premises) in a commercially reasonable manner throughout the term of the lease.
- **Community Room.** The lease states that the entire first floor meeting room of the building (Community Room) shall remain open and available to the public from 8 a.m. until 5 p.m. on a daily basis, including restrooms located on either end of this space. In addition, during golfing season, access to the first floor restrooms will remain available beyond 5 p.m. to accommodate lawn bowlers and evening golfers using the adjacent Lake Park Par-3 Golf Course. The lease further prohibits the County from renting out the Community Room space for private events.

Compliance with Lease Provisions

We interviewed Park and Mary-Bart staff, and examined relevant file documentation and financial records, to assess compliance with each of the key lease provisions identified. The following items of concern were identified during this process.

Base Rent and Utility Invoicing

Our review of Parks file documentation for the period 2002 through 2005 showed a distinct improvement in record keeping beginning in 2004. Prior to 2004, there was no file documentation indicating when rent payments were received, nor copies of checks or check stubs retained. Consequently, for those years, we traced cash receipt documents identified in the County's financial system to confirm the timeliness of rent payments. Beginning in 2004 and continuing in 2005, detailed records of invoices and payments were maintained by Parks staff. For the period reviewed, rent payments were made on a monthly, rather than quarterly, basis. For 2005, all rents were made prior to the quarterly deadlines established in the lease agreement.

Our review of Parks file documentation showed a distinct improvement in record keeping beginning in 2004.

Under terms of the lease, Mary-Bart pays most utilities directly, under separate meter. Invoices and payments for the period reflect a small credit (\$170 per month) for electricity charges associated with the public Community Room in the Lake Park Pavilion. Documents also reflect an increase of \$1,859 for the initial rental adjustment, based on 50% of the increase in consumer prices during the previous five years, in 2001.

Insurance Certificates

Parks did not have copies of required insurance certificates on file. File documentation did include a written request for such documentation from Parks staff to the tenant on May 19, 2003, but no response was documented.

Upon our request, Mary-Bart provided an insurance certificate indicating coverage of the *Lake Park Bistro* operation. However, the insurance certificate did not name Milwaukee County as an additional insured party, as required by the lease.

To prevent the County from assuming unnecessary financial risk, we recommend that Parks management:

16. *Enforce and document annually that the Lake Park restaurant lessee maintains required insurance coverage, naming Milwaukee County as an additional insured party, under terms of the lease agreement.*

Facility Reinvestment Premium Payments

As previously noted, the lease agreement called for the creation of a Lake Park Pavilion Trust Fund from the proceeds of Facility Reinvestment Premium payments, based on gross sales, beginning with the fourth year of the lease. Audit findings related to the Trust Fund and related issues are presented in the following subsection of this report.

Lake Park Pavilion Trust Fund

A resolution [File No. 94-763] approved by the County Board on September 29, 1994 authorized the Parks Department to enter into an agreement for the operation of a restaurant at Lake Park Pavilion. That resolution specifically stated:

“BE IT FURTHER RESOLVED, that said agreement shall contain the following provisions:

- Commencing at the close of the third year of the lease, the Lessee shall pay to the Lessor three percent (3%) of gross sales in excess of one million four hundred ninety-nine thousand, nine hundred and ninety-nine dollars (\$1,499,999.00).
- The three percent (3%) of gross sales shall be deposited in an interest bearing account and used as an improvement and maintenance account for the Lake Park Pavilion and its immediate area.”

However, despite the fact that both the authorizing resolution and the resulting lease agreement specifically require the lessee (Mary-Bart) to pay the lessor (Milwaukee County Parks Department) the reinvestment premium payments for deposit into an interest bearing account, Mary-Bart instead established its own interest bearing account, into which it has made the three percent payments directly.

Mary-Bart’s manner of addressing this significant lease provision was challenged by the Parks administration.

Mary-Bart’s manner of addressing this significant lease provision was challenged by the Parks administration in a letter dated July 5, 2000. A memo from Corporation Counsel dated August 21, 2000 endorsed Mary-Bart’s actions, stating, in part:

“Mr. Bartolotta has indicated that signatures of both himself and a representative of the County be required for a draw from the fund and that a member of his firm will provide the County with appropriate documentation to support the amount of funds placed on deposit. These actions serve to substantially comply with the terms of the lease agreement concerning the facility reinvestment premium.”

We believe that treatment of the reinvestment premium payments and the Trust Fund should be re-visited for the following reasons:

The bank confirmed that the account has no special designation or controls establishing it as a trust fund.

- Although the Parks Director has signature authority on the bank account established by Mary-Bart, bank records show that the primary account holder is Mary-Bart. Further, bank officials confirmed that *either party* can draw on the account, rather than the dual signature protocol referenced in the Corporation Counsel memo supporting the proposed arrangement. This begs the obvious question, why does the tenant have any signature authority whatsoever on an account established for purposes of depositing and safeguarding rental payments to the County? The authorizing County Board resolution states that the reinvestment premium amounts "...shall be deposited into an interest bearing account and be used as an improvement and maintenance account for the Lake Park Pavilion and its immediate area. However, the bank confirmed that the account has no special designation or controls establishing it as a trust fund for the expressed purposes identified in both the resolution and the lease agreement.
- The lease agreement states that the Trust Fund established with proceeds from the reinvestment premiums "...will be used to enhance exterior and interior Building and immediate area improvements, repairs and upgrades, as presented by the Lessor and reviewed by the Lessee." The current arrangement reverses the roles of lessor and lessee, with Mary-Bart requesting concurrence from Parks for projects of the tenant's choosing.
- Both the lease agreement and the authorizing resolution by the County Board state that the reinvestment premium amounts will be paid by the lessee to the lessor. The current arrangement is not consistent with this specific directive.
- The reinvestment premium payments are clearly identified in the lease agreement as rental payments. However, because the lessee deposits the payments directly into the bank account that it established for that purpose, and withdraws the amounts as needed for projects agreed upon by Parks, the rental payments *are never recorded in the County's financial system or identified in the County's financial statements*. Consequently, expenditures from the Trust Fund, approved in concept by the County Board, are not subject to standard County disbursement procedures.

While the ability to withdraw funds with a single signature is a major control weakness, it is important to note that our review of

a majority of the checks issued during a four-year period is consistent with Mary-Bart's statement that all expenditures from the account have, in fact, been authorized with dual signatures.

Use of the Lake Park Pavilion Trust Fund

Our review of file documentation shows that there has been no attempt by Parks staff to validate the accuracy of amounts reported as due, under terms of the lease, and deposited into the account established by the tenant in 1999. Our review of bank statements obtained from Mary-Bart, as well as figures reported by the tenant's independent accountant, confirm the accuracy of deposits calculated on the basis of 3% of the gross sales in excess of \$1,499,999 from restaurant activities, rental and catering revenues, as reported by Mary-Bart for the period 2002 through 2005. **Table 4** summarizes annual deposits and withdrawals from the bank account for that period.

While all expenditures from the Trust Account have been authorized with dual signatures, there has been no attempt by Parks staff to validate the accuracy of amounts deposited into the account.

Table 4
Summary of Annual Deposits and Withdrawals
Lake Park Pavilion Trust Fund
2002—2005

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Total</u>
Deposits	\$ 83,200	\$ 63,600	\$ 82,900	\$ 107,800	\$ 337,500
Withdrawals	50,288	98,502	103,682	71,991	324,463
Year-End Balance	\$ 191,302	\$ 157,617	\$ 138,008	\$ 178,020	N/A
Current Balance (as of 3/22/06) =	\$199,562				
Interest Earned During Period =	\$8,923				

Source: Park Bank.

As shown in **Table 4**, a total of \$337,500 has been deposited into the Trust Fund during the four-year period 2002—2005, with \$324,463 withdrawn for various projects. Our review of documentation for projects funded from the bank account from 2001 through 2005 shows that none of the 32 projects during the period were used for "improvements, repairs and upgrades" of the first floor of the pavilion, the Community Room that is open to

the public. Our visual inspection of the Community Room and adjacent restrooms confirmed that, while clean, the facilities and furnishings were austere and in stark contrast to the upgrades to the remainder of the building. Following are pictures of the contrasting conditions at the Lake Park Pavilion.



Exterior of Lake Park Pavilion.



Community Room (1st floor of Pavilion).

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Entrance to Lake Park Bistro (2nd floor of Pavilion).



Close-up of Community Room corner.

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Lake view from restaurant dining area.



Lake view from Community Room.

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Mary-Bart management expressed its concern that improvements be reasonable in terms of ensuring sufficient resources remain in the Trust Fund.

Mary-Bart management was quick to agree that upgrades to the Community Room are in order, and that it has previously stated to Lake Park Friends, a local parks support group, that it would “authorize” the expenditure of \$75,000 from the Trust Fund for that purpose. Mary-Bart management expressed its concern, however, that improvements be reasonable in terms of ensuring sufficient resources remain in the Trust Fund for basic building maintenance or repairs, such as a roof replacement. Mary-Bart management also stated that it has expressed a willingness to put its own resources into an upgrade of the Community Room in exchange for the right to rent out the room on evenings and weekends, but has met resistance to that idea.

We acknowledge that the current tenant put a considerable amount of its own resources into the initial renovation and upgrade of the second floor of the pavilion at the beginning of the lease period. However, we believe the manner in which the Lake Park Trust Fund has been established and maintained, the documented use of the Trust Fund, and Mary-Bart management’s offer to “authorize” use of Trust Fund monies, reflects a perception that the tenant has ‘veto’ power over use of the Trust Fund. The specific language of the lease states otherwise. As previously noted, the lease agreement states that the Trust Fund “...will be used to enhance exterior and interior Building and immediate area improvements, repairs and upgrades, as presented by the Lessor and reviewed by the Lessee.” In practice, the Trust Fund has been administered in a manner that provides the lessee with the ability to approve, rather than to review, proposed uses of Trust Fund monies.

It should be noted that in discussing this matter with the Parks Director, we were told that preliminary plans to upgrade the Community Room at the Lake Park Pavilion have been developed.

Mary-Bart has acted in good faith in its treatment of the Trust Fund.

While Mary-Bart has acted in good faith in its treatment of the Trust Fund, seeking and obtaining authorization from Parks for all Trust Fund expenditures, clearly, the manner in which prospective uses of Trust Fund monies are determined should be clarified.

For instance, we identified one expenditure from the Trust Fund, the rental of a canvas tent for outdoor activities, that is arguably more appropriately classified as an operational expense of the lessee, rather than an improvement, upgrade or repair to the pavilion.

Further, we note that because the tenant administers all projects funded from the reinvestment premium payments, County contracting procedures, including establishment of disadvantaged business enterprise participation goals, are not followed. Despite a lease requirement that the lessee submit a plan to the County for the utilization of Disadvantaged Business Enterprise (DBE) firms on the construction of improvements, no such plan has been submitted. Documentation for projects funded from the Trust Fund shows that just one of the 32 projects documented during the five-year period reviewed involved the use of a firm certified by the Milwaukee County Office of Community Business Development Partners as a minority-owned or woman-owned DBE.

Finally, upon reviewing bank statements for the period 2002 through 2005, we identified a discrepancy of approximately \$4,275 in the amount of reinvestment premium payments that should have been placed in the Lake Park Trust Fund, based on gross sales figures provided by the lessee. Based on discussions with the lessee's comptroller, the discrepancy is attributable to the lessee's practice of counting interest earned on Trust Fund account balances towards the reinvestment premium rental payment obligation. When we noted that there is nothing in the lease agreement that permits such treatment of

interest earned from account balances, the comptroller indicated that a former Parks staff person had agreed upon that practice, although there is no written confirmation of that.

To address problems identified with the maintenance and use of the Lake Park Pavilion Trust Fund, we recommend that Parks management:

17. *Revisit the issue of reinvestment premium payments and the establishment of a Lake Park Pavilion Trust Fund with Corporation Counsel.*
18. *Monitor and verify the accuracy of reinvestment premium payments based on supporting documentation from the lessee's independent accountant.*
19. *Ensure that future reinvestment premium rental payments from the lessee do not include offsets from Lake Park Trust Fund interest earnings.*
20. *Enforce the lease agreement language that calls for the Parks Department to initiate proposed uses of the Lake Park Pavilion Trust Fund, for review by the lessee, as opposed to the role reversal practiced to date, and establish a protocol for determining appropriate uses of the Trust Fund.*
21. *Consider immediate upgrades to the Community Room at Lake Park Pavilion, utilizing funds available in the Lake Park Pavilion Trust Fund.*
22. *Seek Corporation Counsel advice regarding the appropriateness of permitting the tenant to award and administer contracts for projects funded from the Lake Park Pavilion Trust Fund. In any event, Parks should enforce section 24(c) of the lease agreement and work cooperatively with the tenant and the Office of Community Business Development Partners to provide opportunities for certified DBE firms on projects funded from the Lake Park Pavilion Trust Fund.*

Section 3: Red Arrow Park Site

Red Arrow Park is a 1.2-acre site in the heart of downtown Milwaukee. In 1999, Red Arrow Park underwent renovations that included a refrigerated out-door skating rink and a warming house designed for food and beverage services. Initially, the Parks Department operated the warming house, including limited food and beverage services as well as ice skate rentals, during the skating season that runs from approximately mid-December to the end of February. In 2000, the Parks Department issued a Request for Proposals (RFP) and had some inquiries, but no formal proposals. In 2001 a vendor offered a limited luncheon service for approximately three months out of the year. A separate vendor provided a similar service in 2002.

In October 2001, Starbucks Coffee Company (Starbucks) expressed interest in leasing space to provide food and beverage services at Red Arrow Park. On November 4, 2002, the County Board of Supervisors approved a resolution [File No. 01-636] authorizing and directing the Parks Department to enter into an agreement with Starbucks.

Key Lease Provisions

The lease agreement contains the following key contract provisions:

- **Lease Term.** Initial term of ten years. Tenant has the option to extend the term of the lease for two consecutive five-year periods. Notification must be received 90 days prior to the expiration date.
- **Rent.** Rent is established at \$2,500 per month (\$30,000 annually) for the first five years; \$2,750 per month (\$33,000 annually) for the second five years; \$3,000 per month (\$36,000 annually) for the first five-year optional extension; and \$3,250 per month (\$39,000 annually) for the second optional five-year extension.

- **Utilities.** The lease calls for the tenant to pay for water, gas and electricity used by tenant. Milwaukee County is responsible for reading utility meters and submitting bills to tenant for its portion of utility costs at least once each quarter.
- **Insurance.** Insurance limits are specified in the lease and the lessee is obligated to provide certificates of insurance upon request of the County. The County's Risk Manager is to review the adequacy of insurance limits every five years.
- **Operating Expenses.** Tenant is to pay \$1,000 within 30 days after the end of each year of the initial ten-year term and \$2,000 for each year of the optional five-year extension periods. These sums are to help cover the County's operating expenses for upkeep of common areas at the site such as landscaped areas, the warming hut, sidewalks and the ice rink.

Compliance with Lease Provisions

We interviewed staff from Parks and examined relevant file documentation and financial records, to assess compliance with each of the key lease provisions identified. The following items of concern were identified during this process.

Base Rent, Operating Expenses and Utility Invoicing

We identified no significant problems with the timeliness of Parks' invoicing for base rental charges.

Our review of file documentation for the Starbucks lease identified no significant problems with the timeliness of Parks' invoicing for base rental charges. However, there were problems related to the lease provisions concerning operating expenses and utilities.

Operating Expenses

Parks staff failed to invoice Starbucks for the annual payment of \$1,000 for operating expenses related to common areas at the site. Thus, Starbucks is two years in arrears for lease years ending May 2004 and 2005, respectively. In discussions with Parks staff, the individuals responsible for monitoring and billing for rent and utilities were not aware that Starbucks was required to pay operating expenses.

To collect money owed under the Starbucks lease agreement, we recommend Parks management:

23. *Instruct staff to invoice Starbucks for past due operating expenses of \$2,000 and prepare annual invoices for operating expenses in a timely manner.*

Utilities

Parks staff also failed to invoice Starbucks on a timely basis for utilities for an extended period of time. According to the lease agreement, Parks is responsible for reading utility meters and billing Starbucks, at least on a quarterly basis, for its use of water, gas and electricity.

Parks submitted no utility bills to Starbucks for the 19-month period July 2003 through January 2005.

However, Parks submitted no utility bills to Starbucks for the 19-month period July 2003 through January 2005. On February 11, 2005 Parks submitted a bill totaling \$21,316 for utilities used by Starbucks for the previous 19 months. According to the Parks Regional Operations Manager responsible for administering the lease, Starbucks disputed the method used by Parks to arrive at the charges. Negotiations continued throughout 2005 and on December 5, 2005, Starbucks paid \$26,893 for utilities used during the period July 2003 through September 2005. Based on a verbal description of the method used by Parks to bill Starbucks for electricity, we found it to be reasonable.

To comply with lease provisions concerning utility charges at Red Arrow Park, we recommend Parks management:

24. *Bill Starbucks on a quarterly basis for utilities used by the firm in its operations at Red Arrow Park.*

To avoid future disputes and to provide a proper audit trail for allocating utility charges, we recommend that Parks management:

25. *Retain documentation of the calculations used to determine the appropriate amount of electricity charges billed to Starbucks.*

Other Issues

In May and June of 2003, the County and Starbucks signed an Acceptance and Delivery of Possession agreement, stating that they acknowledge and agree that the premises was tendered to the tenant on the possession date of May 7, 2003. The acceptance form clearly stated:

“Although the items of Landlord’s Work indicated below are not complete, Tenant elects to enter the space while Landlord continues its work. Tenant reserves all its rights and remedies with respect to Landlord’s work. Upon completion, Tenant will resubmit this form to the Landlord to establish the Date of Possession.”

The lease agreement requires that the Parks Department and Starbucks execute a memorandum stating the actual commencement date, rent commencement date and expiration date promptly after the rent commencement date. This form was never drafted.

To prevent potential disputes concerning official notice dates associated with lease expirations and/or extensions, we recommend that Parks management:

26. *Execute a retroactive memorandum stating the actual commencement date, rent commencement date and expiration date of the Starbucks lease.*

We also noted that the lease agreement with Starbucks fails to contain language concerning late payment penalties, as required by s. 56.32 of the General Ordinances of Milwaukee County. Since this provision was not included in the original lease agreement signed by both parties, amending the current lease may require some give and take on another issue, such as the recoupment of past due operating expenses.

To comply with County Ordinances, we recommend that Parks management:

27. *Amend its lease with Starbucks to include required language under s. 56.32 of the General Ordinances of Milwaukee County regarding penalties and interest applied to late payments by vendors.*

Section 4: Market Rates for Leased Properties

As previously noted, part of the County Board resolution initiating this audit directed that it include an assessment of lease rental payments in comparison to other facilities in the community.

Considerations for Establishing Lease Rates

There are several considerations for establishing rates for commercial real estate lease agreements. These include:

- Improvements offered by the lessor;
- The cost of any improvements the lessee is required to provide;
- Length of term and options to extend or to cancel; and
- Market rates for comparable properties.

An added consideration in determining appropriate lease rates for commercial ventures on County parkland is the public purpose served by the arrangement.

Initial solicitations for proposals from the private sector generated no interest.

For each of the three County Parks sites addressed in this audit report, Milwaukee County sought out interest in the private sector for the development of commercial enterprises to enhance the public's enjoyment of existing, publicly-funded facilities. In each instance, however, the County experienced great difficulty developing a suitable private sector partnership. In all three cases, initial solicitations for proposals from the private sector generated no interest. In the case of the O'Donnell Park site, the initial partnership was fraught with difficulties that led to threats of litigation until a satisfactory replacement (the second of two attempts) was found to assume responsibility for the original lease. It is with this background in mind that we provide the

following information concerning the lease rates established for the three sites under review.

Limited Market Comparisons

Following is a limited comparison of rental rates for a similar City of Milwaukee facility, as well as various commercial rental rates for retail space in close proximity to the County sites under review.

City of Milwaukee Comparison

Table 5 compares rental rates of the City's lease for *Pieces of Eight Specialty Restaurant* with those of the County's leases for *Coast Restaurant* and *Lake Park Bistro*.

Table 5 Comparison of Selected City and County Lease Rental Rates			
<u>Provisions</u>	<u>Milwaukee County Coast Restaurant</u>	<u>Milwaukee County Lake Park Bistro</u>	<u>City of Milwaukee Pieces of Eight Specialty Restaurant</u>
Lease Term:	10 years +	10 years +	10 years +
Annual Minimum Rent:	\$39,525	\$33,319	\$75,000
Monthly/Base Rent:	\$3,294	\$2,777	\$6,250
Percent of Receipts:	3%	3%	2%
Percent of Gross Receipts	\$2.5 million	\$1.5 million	\$3.75 million
Starts at:	(in addition to base)	(in addition to base)	(in lieu of base)
Square Footage	7,045	6,700	8,178
Base Rent per Square Footage	\$5.61*	\$4.97	\$9.17
Total Rate with Percent of Receipts Impact**	\$5.61	\$18.45	\$9.17
* Increase to \$7.50 in 11 th year of lease (2006). ** 2005 actual.			
Source: Individual City and County lease agreements and payment records.			

As shown in **Table 5**, the base rental rates for the County-leased sites are substantially lower than for the City site. However, when the premium reinvestment rental payment for the *Lake Park Bistro* lease is included, the rental rate for that site is much higher than that for both *Coast Restaurant* and *Pieces of Eight*

Specialty Restaurant. Regarding the *Coast Restaurant* base rental rate, we note the troubled history behind finding a suitable tenant for that location, and point out that the recently approved settlement for the handling of parking fees associated with *Coast Restaurant* patrons will result in an estimated \$31,000 in parking fees for the County annually. If this revenue is included as rent in the above analysis, the effective rate for *Coast Restaurant* is approximately \$10.01 per square foot, which is somewhat higher than the *Pieces of Eight* rate for 2005. Beginning in 2006, the base rent for *Coast Restaurant* increases an additional \$2.50 per square foot. It should also be noted that all of the above rates could fluctuate based on changes in gross sales at each location.

Commercial Rate Comparison

Table 6 shows various commercial lease rates for retail space in close proximity to the three County sites under review in this audit report. Although the rates are not directly comparable because different leases may vary in their placement of responsibility for various expenses such as utilities and janitorial services, **Table 6** provides a rough idea of base market rates for commercial real estate properties in the downtown Milwaukee area.

**Table 6
Milwaukee Area
2005 Retail Space
Lease Rates**

	<u>Address</u>	<u>Square Footage</u>	<u>Rate Per Square Foot</u>
NEAR NORTH WATER STREET			
Starbucks – Red Arrow Park	920 N. Water St.	969	\$30.96
The McCormick	1619 N. Farwell Ave.	1,005	17.00
714 N. Broadway – Retail	714 N. Broadway	1,281	15.00
1507 E. North Avenue	1507 E. North Ave.	1,500	14.50
Design Center – Retail	1115-17 N. Water St.	890	14.00
NEAR EAST MICHIGAN STREET			
Wirth & Hammel Stable Shops	167-173 Broadway	5,812	\$18.00
753 N. Water Street – Retail	753 N. Water St.	3,794	18.00
219-227 E. Wisconsin – Retail	219-27 E. Wisconsin	5,100	17.00
631 N. Milwaukee Street – Retail	631 N. Milwaukee St.	3,500	10.00
NEAR E. NEWBERRY BLVD.			
Humboldt Ridge	221 N. Humboldt Ave.	6,380	\$18.00
Park Place Shopping Center	801-09 E. Capitol Dr.	6,300	14.00
1610 N. Water Street	1610 N. Water St.	6,000	13.00
Lake Park Bistro – Lake Park	3133 E. Newberry	6,700	\$4.97/\$18.45*
NEAR EAST WISCONSIN AVENUE			
319-323 E. Wisconsin Avenue	319-23 E. Wisconsin	8,300	\$14.00
Pieces of Eight Restaurant	550 N. Harbor Dr.	8,178	9.17
720 N. Water Street	720 N. Water St.	7,780	\$7.00-\$9.00
Coast Restaurant**	931 E. Wisconsin Ave.	7,045	\$5.61/\$10.01*

* Second figure includes adjustments for gross sales premiums and parking fees.

** Base rental rate increases \$2.50 per square foot in 2006.

Source: Wisconsin Business Journal, City of Milwaukee and Milwaukee County lease agreements.

The rental rates established for each of these sites appear reasonable.

As shown in **Table 6**, the rental rate established for the Red Arrow Park Starbucks site appears to be above market rates for retail space in the downtown area. The data also shows that while base rental rates for leases associated with restaurants located at the O'Donnell Park and Lake Park sites appear below market rates, when parking fees (O'Donnell Park site) and reinvestment premium rates (Lake Park site) are included, rental rates for those locations are generally in line with market rates. Grandview management noted that its significant initial investment to buy out the previous, unsuccessful leaseholder, as well as for renovation costs, were made possible by achieving attractive rental and parking rates. Mary-Bart management also noted its large start-up investment in upgrading the Lake Park Pavilion. Considering the difficulties experienced by the County in attracting and facilitating these commercial developments, as well as the significant improvements to the facilities contributed by the tenants at both locations, the rental rates established for each of these sites appear reasonable.

Section 5: Management Oversight of Leases

Sections 1 through **3** of this report contain descriptions of a number of specific problems associated with the administration of commercial lease agreements at three separate Parks locations. During the period under review (2002—2005) the responsibility for the contract management function changed hands several times. Based on our review, we identified several areas in need of improvement, including the following:

- Timely invoicing for base rent and utility charges due from lessees;
- Billing for certain costs and obtaining supporting documentation to verify the accuracy of payments based on gross sales;
- Enforcing various lease provisions, such as those concerning parking at *Coast Restaurant* and proposal of projects to be funded from the *Lake Park Pavilion Trust Fund*;
- Obtaining County Board approval for agreements that alter previously-approved lease agreements;
- Clarifying ambiguous lease provisions with formal written agreements on substantive operational issues;
- Obtaining required certificates of insurance, with important language designed to protect Milwaukee County interests, from lessees.

Fragmented Responsibility

Parks' lack of management oversight of lease agreements is reflected in the fragmented responsibility for, and limited staff time devoted to, lease management. For instance, several people are involved in administering the lease with Grandview Management for *Coast Restaurant*. One person does the invoicing and processing of rent and utility payments, another does the utility calculations, and someone else invoices and processes parking fees. Each person has developed their own

procedures for performing their tasks, but no one person is responsible for overseeing all aspects of the lease agreement. During the course of our audit fieldwork, when asked about premium rental payments for the *Coast Restaurant*, based on a percentage of gross sales, the person preparing invoices did not have a copy of the lease and was not aware of that lease provision. When asked who was responsible for managing that particular lease, we were directed to the Regional Operations Manager, one of two such positions for the entire Countywide Park system. When we questioned the Regional Operations Manager about the premium rental payments, we were referred back to the individual that prepares the invoices.

This lack of accountability for hands-on management of lease agreements may, in part, be attributable to substantial organizational turmoil in the Parks Department in recent years. Since 2003, there has been significant turnover in the management ranks at Parks. In 2004, Parks was merged with the Department of Public Works into the Department of Parks and Public Infrastructure (DPPI). The merger entailed considerable re-organization and management downsizing. In 2006, the merger of the two departments was abolished.

There is documentation that concerns regarding Parks administrative oversight of contracts, including lease agreements, is not new. A memo dated February 16, 2004 from the former Acting Administrative Manager of DPPI to the Parks Director discussed the need to have a centralized contract management function in place to ensure compliance with contract conditions, monitor receipt of contract payments and to provide management notification of expiring agreements.

The Parks Director has taken steps recently to bolster the resources devoted to contract management. The position of Chief of Operations was recently filled, and on March 9, 2006 the County Board approved a newly created position of Contract

Administrator for the Parks Department. It is anticipated that this individual will provide a focal point for accountability in addressing the concerns raised in this audit report.

Audit Scope

The objective of this audit was to assess the performance of the Department of Parks, Recreation and Culture in administering leases with private businesses that lease space from Milwaukee County for the purpose of performing revenue generating business activity. The audit includes an assessment of compliance with contract terms for lease payments as well as compliance with other key contract provisions, and also includes an assessment of lease rental payments in comparison to other facilities in the community.

The audit was conducted under standards set forth in the United States Government Accountability Office *Government Auditing Standards (2003 Revision)*, with the exception of the standard related to periodic peer review. Limited resources have resulted in a temporary postponement of the Milwaukee County Department of Audit's procurement of a peer review within the required three-year cycle. However, because the department's internal policies and procedures are established in accordance with Government Auditing Standards, and because this audit was performed in compliance with those policies and procedures, the absence of a peer review did not affect the results of this audit.

We limited our review to the areas specified in this Scope Section. During the course of the audit, we:

- Reviewed relevant regulations, policies and administrative procedures, budgets, resolutions and County Board and Committee minutes;
- Selected and reviewed five major lease agreements administered by the Department of Parks, Recreation and Culture (Parks) to determine both the County's and tenants' responsibilities under the agreements and to develop compliance tests for each lease;
- Verified the accuracy of calculations of commissions paid on the basis of gross sales, versus minimum monthly payment obligations;
- Interviewed and corresponded with Parks employees, representatives from the lessees, as well as lessees' Independent accounting firms;
- Interviewed staff at Parks and obtained information pertaining to policies and procedures regarding lease payments, CPI increases, commission payments, facility reinvestment premiums, room rental fees and parking fees;
- Reviewed insurance certificates from Parks and tenants to determine compliance with lease provisions;

- Reviewed accounting documents including cash receipts and fiscal reports used to record rent payments to test that payments were made and accurately processed in the County's financial system;
- Tested procedures used by Parks to track rent payments, facility reinvestment premiums, commissions, room reservations and parking fees;
- Reviewed and tested monthly and year-end reports from lessees to verify accuracy of commissions associated with reported gross revenues/sales for food and beverages;
- Obtained bank statements to verify deposits and withdrawals from the Lake Park Pavilion Trust Fund; and
- Gathered and analyzed information to compare cost per square footage of comparable real estate in the surrounding areas of each lease reviewed.

Date: April 25, 2006

To: Jerome Heer, Director of Audits, Department of Administration

From: Sue Black, Director, Department of Parks, Recreation and Culture

Subject: Audit of Milwaukee County Parks Facilities Leases

Summary

The audit of the facilities leases, which included O'Donnell Park, Lake Park, and Red Arrow, was an excellent exercise to examine our process of administering the performance of contracts and leases. All of the recommendations of the Milwaukee County Audit Department are in concurrence. It has been the goal of the County to improve contract management especially if we are considering entering into new contracts. As stated in the audit, "Our review of Parks file documentation showed a distinct improvement in record keeping beginning in 2004."

The plan is to implement the recommendations and continue improving on management of the contracts. The plan also includes the addition of a contract manager to enforce the contract language.

Section 1: O'Donnell Park Site

- 1. Monitor staff performance in producing timely invoices for Parks facilities leases.**
Concur
- 2. Bill utilities on a monthly basis, as required by the lease. Alternatively, for administrative ease, Parks may wish to seek County Board approval of a lease modification to permit quarterly billing of utilities.**
Concur; The contract manager will seek approval from the County Board for quarterly billing if deemed beneficial to the County.
- 3. Establish controls to spot-check the accuracy of staff revenue posting.**
Concur; Currently controls are already in place to spot-check revenue coding on the monthly FS710 report, Revenue Transaction Detail Report By Org. When errors are found, the accounting department enters a JV to reclass the money to the correct account.
- 4. Obtain and review future calculations and supporting financial statements prepared by Grandview's independent accountant in calculating annual premium rental payments due Milwaukee County under its lease to operate the Coast Restaurant, including for years in which Grandview asserts that no premium rental payments are due.**

Concur; Notification has been sent to Grandview stating in order to comply with the contract signed with Milwaukee County Parks, they will need to send a copy of their audited financial statements each year that will show the gross sales of Coast Restaurant. The contract manager position will monitor the submission of the financial statements.

5. Clarify with the lessee the most practical method of rental calculation and remittance within the general parameters of the lease and amend specific lease provisions as appropriate.

Concur; The language of the contract needs to be clearer so the monthly rent can be calculated accurately. For cash flow purposes and ease of calculation, Parks believes 1/12 of the base rent should be paid each month and a year-end reconciliation for any additional monies due be executed once the final gross sales amount are available makes sense.

6. Enforce the lease provision requiring the submission of financial statements in support of rental calculations, as clarified in recommendation no. 5.

Concur; Notification has been sent to Grandview stating in order to comply with the contract signed with Milwaukee County Parks, they will need to send a copy of their audited financial statements each year that will show the gross sales of Coast Restaurant. The contract manager position will monitor the submission of the financial statements.

7. Require the lessee to provide annual audited financial statements for sales associated with the Harbor Lights Room lease. This could be accomplished by accepting schedules of gross receipts associated with the Harbor Lights Room lease, along with a letter attesting to their accuracy, from the independent CPA firm that produces its annual audit of financial statements on a consolidated basis.

Concur; Notification has been sent to Grandview stating in order to comply with the contract signed with Milwaukee County Parks, they will need to send a copy of their audited financial statements each year that will show the gross sales Ellen's Prestige Catering providing services to Harbor Lights Room. The contract manager position will monitor the submission of the financial statements.

8. Apply recommendations no. 5 and no 6 to the Miller Room lease, as well as to the Harbor Lights Room lease.

Concur; Notification has been sent to Grandview stating in order to comply with the contract signed with Milwaukee County Parks, they will need to send a copy of their audited financial statements each year that will show the gross sales of Ellen's Prestige Catering providing services to Miller Room. The contract manager position will monitor the submission of the financial statements.

9. Update the minimum annual rental payment guarantee for the Miller Room by the indexing formula contained in the lease agreement.

Concur; The consumer price index is to be added to the 2nd year of the contract extension.

10. Clarify the manner in which refunds will be treated. Refunds issued based on dissatisfaction with lessee service should not be allowable deductions from gross sales used to calculate County commissions.

Concur; Language and revise as needed to make contracts clearer and avoid confusion and dissatisfaction between the lessee and lessor. Regarding the Grandview contract, language will be added to clarify the manner in which refunds will be treated. Grandview will be notified of the correct process of handling refunds.

11. Submit the Letter of Agreement to the Milwaukee County Board of Supervisors for approval or rejection.

Concur; The Letter of Agreement dated September 28, 2004 that was signed only by Milwaukee County Corporation Counsel attorney will be signed by Milwaukee County Parks Department and Grandview Management.

12. Ensure signed copies of an approved Letter of Agreement, on Milwaukee County letterhead, are retained in Parks files.

Concur; The Letter of Agreement will be written on Milwaukee County Parks Department letterhead and then submitted to Milwaukee County Board of Supervisors for approval or rejection. If approved, a copy will be forwarded to Grandview Management.

13. Develop, for County Board consideration, formal agreements with Grandview to address the issues of booking reservations for O'Donnell Park site venues, as well as commissions on food and beverage sales from catered outdoor events at the North and South Lawn areas (Garden Space) at the site. A decision by the County to authorize Grandview's planned transition of catering services from Ellen's Prestige Catering to Coast Restaurant staff should be made within the context of this overall agreement.

Concur; Language will be added to clarify the manner of booking reservations, commission calculation, and outdoor events. In addition, the plans for a transition of catering services from Ellen's Prestige Catering to Coast Restaurant needs to be review and included in the contract revisions. The revised contract will be submitted to the Milwaukee County Board of Supervisors for approval or rejection.

14. Report all damage to Parks facilities to the Risk Management Division of the Department of Administrative Services.

Concur; Our safety and security manager will review these procedures with management staff and new contract manager.

15. Require Grandview to supply an amended insurance certificate that complies with lease requirements regarding notification of changes in insurance coverage.

Concur

Section 2: Lake Park Site

16. Enforce and document annually that the Lake Park restaurant lessee maintains required insurance coverage, naming Milwaukee County as an additional insured party, under terms of the lease agreement.

Concur

17. Revisit the issue of reinvestment premium payments and the establishment of a Lake Park Pavilion Trust Fund with Corporation Counsel.

Concur; Parks will revisit the issue of the reinvestment trust fund with Milwaukee County Corporation Counsel.

18. Monitor and verify the accuracy of reinvestment premium payments based on supporting documentation from the lessee's independent accountant.

Concur; A written notice will be sent to Mary-Bart, LLC to instruct them to send the audited financial statement to the contract manager when they are available each year.

19. Ensure that future reinvestment premium rental payments from the lessee do not include offsets from Lake Park Trust Fund interest earnings.

Concur; A written notice will be sent to Mary-Bart, LLC to clarify that the interest earning on the reinvestment account is not considered part of the premium payment.

20. Enforce the lease agreement language that calls for the Parks Department to initiate proposed uses of the Lake Park Pavilion Trust Fund, for review by the lessee, as opposed to the role reversal practiced to date, and establish a protocol for determining appropriate uses of the Trust Fund.

Concur

21. Consider immediate upgrades to the Community Room at Lake Park Pavilion, utilizing funds available in the Lake Park Pavilion Trust Fund.

Concur; Currently there are plans, which are in the final stages, for the updates to be made to the lower level of the Lake Park Pavilion that will be paid for from the Lake Park Pavilion Trust Fund.

22. Seek Corporation Counsel advice regarding the appropriateness of permitting the tenant to award and administer contracts for projects funded from the Lake Park Pavilion Trust Fund. In any event, Parks should enforce section 24(c) of the lease agreement and work cooperatively with the tenant and the Office of Community Business Development Partners to provide opportunities for certified DBE firms on projects funded from the Lake Park Pavilion Trust Fund.

Concur; Parks will work with Corporation Counsel and Mary-Bart, LLC to stress the importance of using certified DBE firms on projects funded from the Lake Park Pavilion Trust Fund.

Section 3: Red Arrow Park Site

23. Instruct staff to invoice Starbucks for past due operating expenses of \$2,000 and prepare annual invoices for operating expenses in a timely manner.

Concur; Parks will bill prior years and adjust yearly invoice process for Starbucks to include the operating costs. Once the contract manager position is filled, the monitoring and enforcing the lease agreement language will be the responsibility of this position.

24. Bill Starbucks on a quarterly basis for utilities used by the firm in its operations at Red Arrow Park.

Concur

25. Retain documentation of the calculations used to determine the appropriate amount of electricity charges billed to Starbucks.

Concur

- 26. Execute a retroactive memorandum stating the actual commencement date, rent commencement date and expiration date of the Starbucks lease.**

Concur

- 27. Amend its lease with Starbucks to include required language under s. 56.32 of the General Ordinances of Milwaukee County regarding penalties and interest applied to late payments by vendors.**

Concur

Section 4: Market Rates for Leased Properties

No recommendations.

Section 5: Parks Management Oversight of Leases

No recommendations.